IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1515 OF 2005

...

Smt.Rudramma Vasantrao Patil ....Petitioner
v/s.
Madhukar Narhar Hirphode & Ors. ....Respondents

...

Mr.P.M.Mengane for the Petitioner.

...

CORAM: D.K.DESHMUKH, J.

DATED: 21st September,2005

P.C.:

1. Heard the learned Counsel for the Petitioner at length. Perused the record.

2. It appears that when the Defendants filed the counter claim, they have not shown the present Petitioner as a Defendant to their counter-claim. Perusal of the provisions of Order 8 Rule 6-A of CPC shows that a Defendant can make counter claim only against the Plaintiff and if the Defendant wants somebody else to be bound by the decree that may be passed in the counter-claim apart from the Plaintiff, those persons have to be separately joined as parties. Admittedly, the present Petitioner has not been joined as a party to the counter claim. She was Defendant No.2 in the original suit. Original suit has been withdrawn. Really speaking even the

Petitioner had joined as a Plaintiff in the counter-claim, but on her application her name is deleted as Plaintiff. Therefore, unless the persons who are presently Plaintiffs in the counter claim join the Petitioner as a Defendant in their counter claim, it cannot be said that the present Petitioner is the Defendant in the counter claim, who is Defendant in the civil suit. That civil suit has been withdrawn by the Plaintiffs. Therefore, unless the Petitioner can be said to be the Defendant in the counter claim, there was no question of permitting her to file written statement. Petition is rejected.

...